IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 23.11.2004

Coram

The Honourable Mr. Justice V. KANAGARAJ

W.P. No.35778 of 2002

Umapathy Ramaswamy ... Petitioner

..Vs..

1. The Dy. General Manager,
   Canara Bank,
   Disciplinary Action Cell,
   Circle Office,
   563/1, Anna Salai,
   Chennai - 18.

2. The Tamil Nadu State
   Scrutiny Committee,
   Adi Dravida and Tribal
   Welfare Department,
   Namakkal Kavingar Maligai,
   3rd Floor, Secretariat,
   Chennai - 9. ... Respondents

Petition under Article 226 of The Constitution of India, praying to issue a writ of certiorarified mandamus.

For Petitioner : Mr. M. Veluswami
For Respondents : Mr. P.S. Raman,
Sr. counsel for R1

Mrs. V. Velumani,
Addl. Govt. Pleader(w)
for R2

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O R D E R

The above writ petition has been filed praying to issue a writ of certiorarified mandamus, to call for the proceedings of the first respondent in CNC/DAC/590/CF - 350 PS dated 5.6.2002 and quash the same and direct the first respondent to reinstate the petitioner as Clerk with all consequential benefits.

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2. Today, when the above matter was taken up for consideration, learned counsel for the petitioner would submit that the petitioner belongs to a Scheduled Caste community and obtained community Certificate on 5.12.1978 to that effect; that she was selected as Clerk in Telecom department in the quota reserved for Scheduled Caste and worked in that capacity from 1979 to 1985; that on 2.11.1979, the petitioner married one Ramasamy, who belongs to Malayali community; that according to law, the wife would embrace the husband's community after marriage and hence the petitioner obtained community Certificate on 27.1.84 that she is a Malayali; that she got appointment in the first respondent's Bank as Clerk-cum-Cashier under the Scheduled Tribe quota; that the District Level Vigilance Committee, consisting of two members, without holding proper enquiry and without affording sufficient opportunity to the petitioner, by an order dated 24.7.2000, cancelled the community Certificate; that the petitioner filed an appeal before the second respondent viz. the State Level Scrutiny Committee; that when the appeal was pending, the first respondent terminated the services of the petitioner without any show cause notice; that the petitioner filed W.P. No.18669 of 2000 before this Court, challenging the order of termination and the said writ petition was dismissed; that the petitioner has filed W.A. No.2258 of 2001 before this Court and the same was admitted and is pending; that the appeal filed before the second respondent was rejected, holding that the petitioner belongs to Scheduled Caste community only and wanted the first respondent to objectively consider the case of the petitioner for appointment in the Scheduled Caste quota and pass necessary orders to that effect; that the first respondent without considering the case of the petitioner, rejected her request for appointment and hence she would seek for the relief extracted supra.

3. In support of his submissions, learned counsel for the petitioner would rely on the decisions reported in MADHURI PATIL v. ADDL. COMMR., TRIBAL DEVELOPMENT (A.I.R. 1995 S.C. 94), wherein it is held that the order passed by the second respondent, consists of two member Committee, is not valid. The committee should consist of three members. He also relied on the decision reported in VALSAMMA PAUL v. COCHIN UNIVERSITY ((1996) 3 S.C.C. 545) in paragraph 34 in support of his submission and submits that the respondent-Bank is not in any way prejudiced in appointing the petitioner.

4. Per contra, learned counsel appearing for the first respondent would submit that as per the decision of the Supreme Court, the Bank has no choice, but to issue the order of termination, because of the cancellation of the community Certificate; that the petitioner filed writ petition, which came to be dismissed, after contest; that unless that judgment is set

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aside by the Division Bench, the termination has become final; that though the District level committee consists of two members, the State Level Committee consists of three members, which, after giving opportunity to the petitioner and perusal of the materials available, cancelled the community Certificate and held that a genuine SC should not be penalised for her ignorance and requested the Bank to consider the case of the petitioner; that the Bank has considered the case of the petitioner and found that it is impossible to change the character and hence rejected the petitioner's request for appointment.

5. In support of his submissions, learned counsel for the respondents relied on the decision reported in VALSAMMA PAUL vs. COCHIN UNIVERSITY (1996(3) S.C.C. 545), particularly paragraphs 6(e), 6(g), 10, 16, 32, 67 and the decision reported in MADHURI PATIL vs. ADDL. COMMR. TRIBAL DEVELOPMENT (A.I.R. 1995 S.C. 94), particularly paragraph 12.

6.So far as the first judgment is concerned in paragraph 6 e, it is reads thus:

> "...Social and economic justice is a right enshrined for the protection of society. The right to social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular, Articles 14,15,16, 21, 38,39 and 46 of the Constitution, is to make the quality of the life of the poor, disadvantaged and disabled citizens of society, meaningful. Equal protection in Article 14 requires affirmative action for those unequals by providing facilities and opportunities. While Article 15(1) prohibits discrimination on grounds of religion, race, caste, sex, place of birth, Article 15(4) enjoins upon the State, despite the above injunction and the one provided in Article 29(2), to make special provision for the advancement of any socially and educationally backward classes of citizens or for the Dalits and Tribes. Equally, while Article 16(1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State, Article 16(4) enjoins upon the State to make provision for reservation for these sections which in the opinion of the State are not adequately represented in the services under

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the State. Article 335 of the Constitution mandates that claims of the members of the Dalits and Tribes shall be taken into consideration in making appointments to services and posts in connection with affairs of the Union or of a State consistent with the maintenance of efficiency of administration...."

Paragraph 10 of the judgment reads thus:

"The question, therefore is: Whether a candidate, by marriage, adoption or obtaining a false certificate of social status would be entitled to an identification as such member of the class for appointment to a post reserved under Article 16(4) or for an admission in an educational institution under Article 15(4)? In Madhuri Patil Vs. Addl. Commr. Tribal Development, the appellants were daughters of one Laxman Patil who was a Hindy Koly (forward class).They obtained social status certificates as Mahadeo Koli, Scheduled Tribe and were admitted into Medical College. When it was found that they belonged to Forward Class, their admissions were cancelled and writ petitions were dismissed culminating in the aforesaid judgment. This Court had held that for the purpose of entitlement to admission under Article 15(4), the identification by the President as a Scheduled Tribe under Article 342(1) subject to the law under Article 342 (2) as amended by the Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976, is conclusive. In other words, this Court had not accorded to a member of Forward Class, by obtaining a false certificate, the status of a Scheduled Tribe. Admission given on the basis of false certificate was declared unconstitutional.

Paragraph 16 of the judgment is as follows,

"The Constitution seeks to establish a secular socialist democratic republic in which every citizen has equality of status and of opportunity, to promote among the people dignity of the individual, unity and integrity of the nation transcending them

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from caste, sectional, religious barriers fostering fraternity among them in an integrated Bharat. The emphasis, therefore, is on a citizen to improve excellence and equal status and dignity of person. With the advancement of human rights and constitutional philosophy of social and economic democracy in a democratic polity to all the citizens on equal footing, secularism has been held to be one of the basic features of the Constitution (Vide: S.R. Bommai v. Union of India) and egalitarian social order is its foundation. Unless free mobility of the people is allowed transcending sectional, caste, religious or regional barriers, establishment of secular socialist order becomes difficult. In State of Karnataka vs. Appa Balu Ingale, this Court has held in para 34 that judiciary acts as a bastion of the freedom and of the rights of the people. The Judges are participants in the living stream of national life, steering the law between the dangers of rigidity and formlessness in the seamless web of life. A Judge must be a jurist endowed with the legislator's wisdom, historian's search for truth, prophet's vision, capacity to respond to the needs of the present, resilience to cope with the demands of the future to decide objectively, disengaging himself/herself from every personal influence or predilections. The Judges should adapt purposive interpretation of the dynamic concepts under the Constitution and the Act with its interpretative armoury to articulate the felt necessities of the time. Social legislation is not a document for fastidious dialects but means of ordering the life of the people. To construe law one must enter into its spirit, its setting and history. Law should be capable to expand freedom of the people and the legal order can weigh with utmost equal care to provide the underpinning of the highly inequitable social order. Judicial review must be exercised with insight into social values to supplement the changing social needs. The existing social inequities or imbalances are required to be removed readjusting the

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social order through rule of law. In that case, the need for protection of right to take water, under the Civil Rights Protection Act, and the necessity to uphold the constitutional mandate of abolishing untouchability and its practice in any form was emphasised."

Paragraph 32 of the judgment reads as follows:

"The immediate question arises: Whether recognition of the community is a per-condition? Though it was consistently held that recognition is a circumstance to be taken into consideration, marriage being personal right of the spouses they are entitled to live, after marriage, openly to the knowledge of all the members of the community or locality in which they live and by such living they acquire married status. In the light of the constitutional philosophy of social integrity and national unity, right to equality assured by the human rights and the Constitution of India, on marriage of a man and a woman, they become members of the family and are entitled to the social status as married couple, recognition per se is not a pre-condition but entitled to be considered, when evidence is available. It is common knowledge that with education or advance of economic status, young men and women marry against the wishes of parents and in many a case consent or recognition would scarcely be given by either or both the parties or parents of both spouses. Recognition by family or community is not a pre-condition for married status. "

7. So far as the second judgment is concerned, viz. AIR 1995 SC 94, in paragraph 12 it is held that,

"The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily have the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC Candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational

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> institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is therefore, necessary that the certificates issued are scrutinized at the earliest and with utmost expedition and promptitude.

"One of the procedures suggested to streamline the issuance of the social status certificates, their scrutiny and their approval is that the inquiry should be completed as expeditiously as possible preferably within such period not exceeding two months. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution of India. No suit or other proceedings before any other authority should lie. The High Court would dispose of these cases as expeditiously as possible within a period of three months. "

8. On such arguments, the learned Government Advocate would pray to dismiss the above writ petition with costs.

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the respondent as well, what this court is able to assess from the writ petition is that the petitioner is seeking to quash the proceedings of the first respondent dated 5.6.2002 whereby the Deputy General Manager, Canara Bank, remarking that the petitioner's appointment was based on her declaration and caste certificate that she belonged to Scheduled Tribe Category. The said certificate was found to be false and cancelled by the District Caste Verification Committee and further confirmed by the State Scrutiny Committee. In view of the above, the very recruitment itself is void abinitio. Hence, the request for reinstatement could not be complied with as sought for by the petitioner.

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10. It is relevant to consider the petitioner's prayer since being confined only to reinstate the petitioner as a clerk in the first respondent bank, at the outset, it is open to the petitioner to explain as to why the petitioner's services were terminated. Without going into such vital aspect, it is difficult to arrive at a conclusion regarding the refusal to reinstatement of the petitioner.

11. From the averments, one could understand that for having made false declaration causing petition on a false caste certificate to the effect that the petitioner was a Scheduled Tribe, she got appointment to the post of Clerk in the first respondent Bank in the quota meant for ST and since the District Level Committee and State Level committee have concurrently decided that the petitioner is not Scheduled Tribe,having filed a writ petition in WP. 18669 of 2000, which ultimately came to be dismissed, now the petitioner has come forward to initiate this writ petition with fervent hopes to get interim order or so. It is further made known by the petitioner that Writ Appeal filed against the dismissal of the writ petition is pending before this Court itself. Unless the said Writ Appeal is disposed of, till such time, taking into consideration of the concluded decision of the District Committee and State Committee in cancelling the Caste Certificate of the petitioner that she is belonging to the community of Scheduled Tribe the writ court dismissed the writ petition and therefore no decision could be made out regarding reinstatement of the petitioner in the office of the first respondent bank. Therefore the above writ petition need not have been filed by the petitioner at all since to decide the question of reinstatement in a job as a clerk in the first respondent bank would arise only if her caste certificate as Scheduled Tribe is ascertained. So far as it has only been cancelled by authorities concerned, question of reinstatement does not arise at all. Therefore, the only conclusion that this Court could arrived at in the circumstances of the case is that since the refusal to reinstate her by the first respondent as per impugned order is based on the cancellation of the Scheduled Tribe Caste Certificate, unless the same is validated by an order of the competent authorities or the Court, there is no point in directing the first respondent bank to reinstate the petitioner. Hence, the writ petition with the above prayer has to fail and hence, the following order:-

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In result, the above writ petition is without merit and the same is liable to be dismissed as such, and is dismissed accordingly.

ssa/bg

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Asst.Registrar

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Sub Asst.Registrar

To
1. The Dy. General Manager,
   Canara Bank,
   Disciplinary Action Cell,
   Circle Office,
   563/1, Anna Salai,
   Chennai - 18.

2. The Tamil Nadu State
   Scrutiny Committee,
   Adi Dravida and Tribal
   Welfare Department,
   Namakkal Kavingar Maligai,
   3rd Floor, Secretariat, Chennai - 9.

1 cc to Mr.P.c.Raman, Advocate Sr 51181
1 cc to Mr.M.Veluswami, Advocate Sr 50386
1 cc to Government Pleader Sr 50492

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